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Policy Advocacy Paper on Law No. 11 year 2020 on Job Creation in the Employment Sector

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Preface

The problem of the increasing number of unemployed has prompted the government to overcome the problem by forming Law Number 11 of 2020 concerning Job Creation (Job Creation Law). According to Minister / Head of the National Planning and Development Agency (Bappenas) Suharso Monoarfa, currently the number of unemployed people in Indonesia has increased by around 3.7 million people due to the COVID-19 pandemic. With this addition, the potential number of unemployed people in Indonesia could be 10.58 million people. The problem of the increasing number of unemployed people has prompted the government to overcome the problem by forming Law Number 11 of 2020 concerning Job Creation (Job Creation Law). According to Minister / Head of the National Planning and Development Agency (Bappenas) Suharso Monoarfa, currently the number of unemployed people in Indonesia has increased by around 3.7 million people due to the COVID-19 pandemic. With this addition, the potential number of unemployed in Indonesia could be 10.58 million people.[1]

[1] Rika Anggraeni, "Six Facts of the Omnibus Law on Job Creation: Jokowi's Ambition to be Ratified by the Council," Bisnis.com, 6 October 2020, https://ekonomi.bisnis.com/read/20201006/9/1301383/enam-fakta-omnibus-law-cipta-kerja-ambisi-jokowi-hingga-disahkan-dewan

The government is optimistic that the Job Creation Law will be able to improve the investment climate in Indonesia and make many companies shift their investment to Indonesia. Since the beginning of the discussion, the labor cluster in the Job Creation Law has attracted public attention. President Joko Widodo and Chairman of the People's Representative Council (DPR)[2] Puan Maharani once agreed to postpone the discussion of material on labor clusters to be discussed at the end of the DPR trial. The constellation of rejection of the Law slightly changed after a meeting of several trade union representatives and the Work Committee (Panja) on the Draft Job Creation Law in August 2020. At that meeting, the trade union together with representatives of the Working Committee on the Job Creation Bill agreed on several things that were planned to be adopted in the Inventory List of Draft Issues (LDI) Job Creation Act.

The agreement, among others, is that the employment material in the Job Creation Bill does not conflict with the eight decisions of the Constitutional Court (MK)[3], returns criminal sanctions and administrative sanctions related to labor violations into the Work Creation Bill in accordance with the provisions of Law Number 13 of 2003 concerning Manpower (Manpower Law), and formulate labor relations that are more adaptive to industrial development. [4]

However, the labor material in the draft Work Creation Bill which was approved by the DPR with the President on October 5, 2020 was different from the agreement between the DPR and labor groups.[5] As a result, a larger number of labor unions agreed to reject the Job Creation Bill by holding a national strike and demonstrations in a number of areas[6].

The labor clusters regulated in chapter IV of the Job Creation Law amend four laws, namely the Manpower Law, Law Number 40 of 2004 concerning the National Social Security System (SJSN Law), Law Number 24 of 2011 concerning Social Security Administering Bodies (BPJS Law), and Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (UU PPMI). Some of the material in the Job Creation Law in the labor cluster is problematic and leaves many questions. These materials, among others, relate to foreign workers, Fixed Time Work Agreements (PKWT), outsourcing, working hours, wages, termination of employment (PHK), as well as social security and severance pay.

2. ANALYSIS OF CHANGES IN LABOR REGULATION IN THE COPYRIGHT OF WORK

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[2] CNN Indonesia, “Jokowi Delays Discussion of the Employment Points Job Creation Bill” CNN, 24 April 2020 <https://www.cnnindonesia.com/nasional/20200424160928-32-497019/jokowitunda-pembahasan-ruu-cipta-kerja-poin-ketenagakerjaan>

[3] The Constitutional Court's decision relates to a Fixed Term Work Agreement (PKWT), wages, severance pay, employment relations, termination of employment (PHK), settlement of industrial relations disputes, social security, and other content related to the Constitutional Court decision.

[4] Budiarti Utami Putri, "4 Points of Agreement between Workers and DPR regarding the Omnibus Law of the Job Creation Bill," Tempo.co, 21 August 2020 <https://nasional.tempo.co/read/1378089/4-poinkes Agre-antara-buruh- with-dpr-question-omnibus-law-ruu-copyright-working / full & view = ok>

[5] CNN Indonesia, "Workers are Angry, the Draft Job Creation Law is Different from the Discussion," CNN, 12 October 2020 <https://www.cnnindonesia.com/nasional/20201012142428-32-557432/buruhmarah-draf-uu-cipta-kerja-beda-dengan-pembahasan>

[6] Addi M Idhom, "Today's Demo Rejects Omnibus Law: Chronology, List of Locations, Causes", Tirto.id, 8 October 2020 <https://tirto.id/demo-hari-ini-tolak-omnibus-law-kronologi- listlocation-causes-f5Kj>

2.1 Foreign Workers

The Job Creation Law removes the obligation for employers who employ foreign workers to obtain permission from the minister or appointed official as regulated in Article 42 of the Manpower Law. The term foreign labor is intended for foreign citizens who hold visas who work in Indonesia[7]. Under the new regulation in the Job Creation Law, it is sufficient for employers to have a Foreign Worker Employment Plan (RPTKA) which is endorsed by the central government. Previously, the Manpower Law stipulated that the granting of permits to employ foreign workers was specified in the Permit to Employ Manpower (IMTA).

The Job Creation Law also removes certain job restrictions for foreign workers. Previously, Article 46 of the Manpower Law prohibiting foreign workers from occupying certain positions regulated by a ministerial decree. The attachment to the Decree of the Minister of Manpower Number 349 of 2019 concerning Certain Positions Prohibited from Occupying Foreign Workers outlines 18 positions, most of which are related to personnel. Under the Job Creation Law, employers are also no longer obliged to return foreign workers to their country of origin after the employment relationship ends.

In addition, the Job Creation Law changes the provisions of Article 42 of the Manpower Law regarding the obligation for employers who employ foreign workers to have a written permit from the Minister or an appointed official. Under the new regulation, it is only sufficient for employers to have a plan for the use of foreign workers approved by the Central Government. The question is, is the government able to guarantee that by relaxing regulations for foreign workers it will not have an impact on reducing the absorption of domestic workers? Then, the next question is how the role of the government in increasing the competence of domestic workers who work with foreign workers while the obligation to transfer technology and transfer skills is eliminated? In fact, the Manpower Law regulates the selective use of foreign workers with the intention of optimally utilizing Indonesian workers through technology transfer.[8] However, the Job Creation Law changed the provisions of Article 45 of the Manpower Law by removing the obligation to appoint local workers as labor assistant for transfer of technology and transfer of expertise from foreign workers who occupy certain positions. Further technical provisions regarding foreign workers are not yet known, considering that the material regarding foreign workers is further regulated in a Government Regulation as stated in the revision of Article 49 of the Manpower Law as amended in Article 81 of the Job Creation Law. By eliminating the obligation to transfer technology and transfer expertise, it means that it is necessary to revise the Presidential Regulation (Perpres) No. 20 of 2018 concerning the Use of Foreign Workers. In the Presidential Decree, the Government provides facilities for investors or industry players who really need foreign workers (TKA) for certain sectors. Employers who employ foreign workers are required to appoint Indonesian workers as companion workers for foreign workers who carry out the following roles:

1. Holding positions other than directors and commissioners;
2. Carry out education and training for the workforce Indonesia in accordance with the qualifications of the position occupied by TKA; and

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[7] Article 1 Presidential Regulation No. 20 of 2018 concerning the Use of Foreign Workers

[8] Hesty Hastuti, Final Report of the Research Team on Legal Problems of Foreign Workers in Indonesia, (Jakarta: National Law Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia, 2005 <https://bphn.go.id/data/documents/22Pen Research% 20 POWER% 20WORK% 20ASING.pdf>

3. Facilitating Indonesian language education and training to (TKA).

Article 27 of the Presidential Regulation states that the appointment of Indonesian workers as companions is carried out for technology transfer and expertise transfer. In addition, employers are required to report the implementation of the use of foreign workers every year to the minister, which includes reports on the implementation of education and training for companion workers.[9]

The elimination of the obligation to transfer technology and transfer skills will have an impact on the protection of Indonesian workers. Primarily, those who work in multinational companies that employ foreign workers who are unable to obtain optimal benefits from the policy.[10] Based on the Global Competitiveness Report 2018-2019, Indonesia is considered low or classified as limited for its innovation competence in the technology sector. Thus far, technology transfer must continue to be pursued. In its study regarding technology transfer, the Indonesian Institute of Sciences (IIS) assesses that there is a need for a review of technology transfer regulations, especially in determining the period of assistance.

In addition, efforts to strengthen agreements or negotiations with foreign investment companies (FIC) are necessary to encourage implementation. transfer of technology through mentoring and education / training schemes. Optimization of central supervision in synergy with supervisors in the regions to monitor the implementation of technology transfer assistance and education / training activities, such as placing labor inspectors in the Online Single Submission (OSS) scheme. Therefore, the government should regulate in more detail on the technicalities of the implementation of outsourcing and technology transfer, not simply eliminating them.

2.2 Fixed Term Work Agreement (PKWT)

The Job Creation Law removes Article 59 of the Manpower Law concerning a Fixed-Time Work Agreement (FWTA, or PKWT in Indonesian). PKWT is a work agreement between a worker and an entrepreneur or company to establish a working relationship for a certain time or for a certain type of work. PKWT also regulates the position or position, salaries or wages of workers, benefits, and facilities for workers and other matters that regulate personal work relationships. companies can only do PKWT for a maximum of two years and can only renew once for a maximum period of time of one year. After that, companies are obliged to appoint workers as permanent employees if they want to continue to employ them. In practice, legal smuggling takes the form of time limit violations PKWT often happens. Another practice, after the contract is finished, the worker applies again to the same company.[11]

The Job Creation Law no longer regulates time limits for work contract schemes based on a certain time. The government considers that the regulation of the maximum limit on non-permanent contracts for three years in the Manpower Law is inflexible and burdensome

[9] Ade Latifa, statement in the press release of the Indonesian Institute of Sciences (LIPI), accessed from http://lipi.go.id/siaranpress/perlindungan-keb Policy-alih-teknologi-bagi-pekerjaindonesia/22009
[10] Ibid.
[11] Ike Farida, interview statement with Hukumonline in the Hukumonline article "The Government Explains the Rationality of Changing PKWT Regulations" accessed from https: // www. Hukumonline.com/berita/baca/lt5e60e1a88fe22/pemerintah- Explain-rationality-ChangeSettings-pkwt?page=3

to the business world.[12]There is material inserted in Article 61A regarding the compensation obligation of entrepreneurs when the non-permanent contracts term ends. Employers provide compensation to workers with a minimum working period of one year at the company concerned. Details regarding this compensation mechanism will only be further regulated in a Government Regulation as an implementing regulation for the Job Creation Law. Questions that have not been answered with this provision are for example the unclear source of funding, whether this compensation will come from compulsory fees paid by entrepreneurs, such as practices imposed by oil and gas companies or through other mechanisms.[13]
The Job Creation Law also removes Article 59 of the Manpower Law, one of which regulates the legal consequences for companies that do not meet the PKWT requirements. The consequence is that workers are appointed from following the PKWT terms to become an Indefinite Time Work Agreement (PKWTT). The existence of this consequence is one of the protections for PKWT workers. So far, Article 59 of the Manpower Law has been the basis for judges who try industrial relations cases in PKWT cases. The judge used Article 59 to grant rights for PKWT workers who experienced violations.[14] With the abolition of Article 59 of the Manpower Law, there was a concern that violations of the rights of PKWT workers would be more massive without any accountability from the employer.

2.3 Outsourcing

Article 66 of the Manpower Law stipulates that outsourcing work limited to work outside the main activity or not related to the production process, except for supporting activities. In the Decision of the Constitutional Court (MK) No. 27 / PUU-IX / 2011, the Constitutional Court decided that outsourcing is a natural thing in the context of business efficiency and companies that contract workers with an outsourcing system must use the PKWT scheme to protect their rights.

Article 66 of the Manpower Law stipulates that outsourced work is limited to work outside the main activity or not related to the production process, except for supporting activities. In the Decision of the Constitutional Court (MK) No. 27 / PUU-IX / 2011, the Constitutional Court decided that outsourcing is a natural thing in the context of business efficiency and companies that contract workers with an outsourcing system must use the FTWA scheme to protect their rights. Based on Article 66 of the Manpower Law, outsourcing is a type of work that is not the main business, such as cleaning services, providing food for workers (catering), security personnel (security), supporting businesses in mining and petroleum, and provision of transport for workers.

However, in its revision, Article 66 of the Job Creation Law no longer lists the limits of what jobs outsourced workers are prohibited from doing. This means that the Job Creation Law

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[12] Ida Fauziyah, interview statement in the Kompas article, accessed from https://money.kompas.com/read/2020/10/19/074613226/ini-skema-karyawan-tetap-dan-karyawan-kontrak-diuu-cipta-kerja?page=all#:~:text=Dalam%20Omnibus%20Law%20Cipta%20Kerja,Kerja%20Waktu%20Tertentu%20(%20PKWT).&text=Setelah%20itu%2C%20perusahaan%20diwajibkan%20untuk,setelah%20lewat%20masa%203%20tahun.

[13] Payaman Simanjuntak, interview statement with Hukumonline in the Hukumonline Article "The Government Explains the Rationality of Changing PKWT Regulations" accessed from https://www.hukumonline.com/berita/baca/lt5e60e1a88fe22/pemerintah-j]rasionalitas-per Change-pengaturan-pkwt?page=3

[14] Andari Yurikosari, interview statement with Hukumonline in Hukumonline's article "Omnibus Law Literacy II: Questioning the Flexibility of PKWT-Outsourcing Rules" accessed from https://www.hukumonline.com/berita/baca/lt5e67e40d8a92e/melek-omnibus-law-ii--menyoal-fleksibilitas-aturan-pkwt-outsourcing?page=5

provides opportunities for outsourcing companies to employ workers for a variety of tasks, including freelancers and full-time workers. This has the potential to make the use of outsourced labor even more uncontrollable if there are no derivative regulations from the Job Creation Law to further regulate it. The Job Creation Law also removes Article 64 and Article 65 of the Manpower Law which regulates employment contractor agreements because the government does not want to enter into the realm of business or civil agreements. The government only regulates the issue of protecting workers from work agreements that place workers in a vulnerable position when confronted by an employer. So that when reflecting on the work relationship between the outsourcing company and its workers; then you can use PKWT or PKWTT so that it opens up opportunities to hire outsourced workers to become permanent workers. For this reason, there is a requirement that outsourcing companies must be legally incorporated and fulfill business licenses which will be regulated later by a Government Regulation. The Job Creation Law also requires companies to compensate their workers if the PKWT ends, at least one year of service, the amount of which is regulated in a Government Regulation. Unfortunately, the Job Creation Law does not address the issue of protecting workers from violations of outsourcing practices that have occurred so far, such as violations of wages, working hours, and types of work being outsourced. Other examples of violations that often occur are, for example, outsourcing companies are telecommunications companies, but outsourced is also the main activity; namely telecommunications. This practice violates the stipulation that the type of work that is outsourced must be activities outside the core business.

Other violations include companies implementing outsourcing that do not provide salaries according to the Regional Minimum Wage (UMR), do not provide appropriate allowances, and do not include workers in BPJS Ketenagakerjaan. Violations are not only committed by private agencies, but also by government agencies. The surveillance system seems not working, because of the perpetrator. these violations are not only private companies but also government agencies.[15]

In short, the options given by the Constitutional Court Decision and the Job Creation Law do not address outsourcing problems, either in the form of better regulations or implementation in the form of supervision and strict sanctions against violations of outsourcing practices. Violations still occur because of the minimum number of supervisors. Based on data from the Ministry of Manpower, the number of labor inspectors is only 1,574 people, while the number of workers reaches 13,138,048 people spread across 252,280 companies.[16] The option of recruiting independent supervisors from labor and entrepreneur circles should be pursued. On the other hand, violations also occur because there is no legal umbrella that guarantees outsourced workers' rights. There is only a Circular of the Director General of Industrial Relations and Social Security for Manpower of the Ministry of Manpower and Transmigration No. B 31 / PHIJSK / I / 2012 concerning Implementation of the Constitutional Court Decision No. 27 / PUU-IX / 2011 which appealed to companies to protect workers' rights.[17] Unfortunately, the government has instead tried to release responsibility by handing over the issue of worker protection through a work agreement

[15] Triyono, Koran Tempo, "Outsourcing Labor Problems", accessed from https://kependempat.lipi.go.id/id/kajian-kependuduk/ketenagakerjaan/66-problematika-buruh-outsourcing
[16] Ade Miranti Karubnia, Menaker: Labor Inspectors Are Unequal to the Number of Companies Supervised, accessed from https://money.kompas.com/read/2020/06/15/210000226/menaker--pengawas-ketenagakerjaan-tak-sebanding-jumlah-perusahaan-yang-diawasi
[17] Ibid.

mechanism which in practice often places a position that is not equally strong between workers and employers.

2.4 Working Time

7 hours a day for 6 working days or 8 hours a day for 5 working days, with the exception of certain business sectors or jobs regulated by a Ministerial Decree. The Job Creation Law then revised article 77 and stipulated that the provision of working time could be exempted for workers in certain business sectors, by setting work time as agreed in the work agreement, or further regulated through company regulations or collective labor agreements with reference to Government Regulations.

In addition, Articles 81with points 21 and 22 of the Job Creation Law amend a number of rules for overtime working in the Manpower Law. Previously, Article 78 of the Manpower Law stipulated that overtime work could only be done at most 3 hours a day and 14 hours a week. The Job Creation Law increases overtime to 4 hours a day and 18 hours a week.

Employers who employ workers over working hours must obtain an agreement with the worker concerned. Thus, the total working time for workers can be up to 58 hours a week. Regulations regarding working hours are a topic of debate in global employment issues. The topic mainly revolves around the obligation to work long and tiring hours, which affects the health, family and life conditions outside of the worker's job.[18]

The importance of regulating working time can be seen from one of the main objectives of the establishment of the labor law, namely the reduction of working hours to provide a working time limit that is considered ideal. International Labor Organization (ILO) studies from 1967 to 1995 show gradual progress towards 40 hours of work per week, with the majority of countries maintaining work time limits while some countries have included them in their national legislation.[19]

The result, since 2005, is 40 hours. one week of work is the standard maximum working time in many countries.[20] Globally, work time restrictions that lead to reduced time and increased work productivity are linked to workers' rights identified in international instruments, including in the International Covenant on Social Rights and Culture (International Covenant of Civil and Political Rights / ICCPR). The ICCPR includes restrictions on working time as part of the right to work in fair and decent working conditions for workers. Therefore, the additional work time regulated in the Job Creation Law has the potential to reduce the right to work in fair and decent working conditions.

2.5 Wages

The Job Creation Law abolishes, amends and introduces new arrangements regarding wages. If the Manpower Act only recognizes the type of minimum wage, then Article 88B of the Job Creation Law contains the concept of wages in units of time and results based on hours. The Minister of Manpower, Ida Fauziyah, explained that the new regulation aims to accommodate

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[18] International Labor Organization, Working time around the world, accessed from https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_104895.pdf=

[19] Ibid

[20] Ibid

the needs of the business sector, which require flexibility in the workforce wage payment scheme for which there is no legal basis in Indonesia.[21]

Hourly wages must be followed with very strict requirements because the potential for exploitation from the employer is enormous. The work model with an hourly wage mechanism based on government regulations also has the potential to not involve stakeholder participation in a balanced manner.

Still related to wages, the Job Creation Law also formulates new regulations related to minimum wages. In Article 89 of the Manpower Law, the minimum wage is determined based on sectoral wages as well as wages at the provincial level and wages at the district / city level which are directed at achieving the feasibility of life. In this article, the provincial minimum wage is determined by the governor by heed the recommendation from the Provincial Wage Council and / or the regent / mayor. Meanwhile, the calculation of components and the implementation of the stages of achieving the need for a decent life shall be regulated by a Ministerial Decree. However, the Job Creation Law removes the provisions of the Provincial Sectoral Minimum Wage (UMSP) and District / City Sectoral Minimum Wages (UMSK). The determination of the provincial minimum wage is regulated and stipulated by the Governor based on economic and employment conditions with certain conditions. The elimination of the sectoral minimum wage resulted in no difference in wages that were adjusted according to the expertise specifications per sector. For example, the value of the minimum wage for workers in the automotive sector or in the mining sector is equal to the value of the minimum wage for workers in the textile or food production sector.

In fact, workers in the automotive and mining sectors have special skills that are different from the textile and food sectors which have consequences on wages. As practiced in various countries, the sectoral minimum wage applies according to the value-added contribution of each industry to Gross Domestic Product (GDP).[22]

Regarding the provincial or district / city minimum wage with certain conditions it also has the potential to harm workers because it will reduce workers' income in their respective sectors. The government stated that a more detailed formulation regarding the minimum wage still needs to be clarified and will be included in a derivative regulation, namely a Government Regulation. This certainly raises concerns for workers if the derivative rules to be made will be more profitable for the employer. Then, Article 90B of the Job Creation Law also stipulates that the minimum wage provision is exempted for Micro and Small Business (UMK) entrepreneurs and is determined based on an agreement between employers and workers in the company. Therefore, workers / laborers in the MSE sector have the potential to earn wages below the provincial or district / city minimum wage provisions based on the agreement of the parties. The government has also changed the components of the structure and scale of wages in companies. Article 92 of the Manpower Law states that employers formulate a wage structure and scale by taking into account class, position, years of service, education and competence. Then, employers carry out periodic wage reviews by taking into

[21] Ihsanuddin, “Jokowi Bantah Upah Minimum Dihitung Per Jam di UU Cipta Kerja, Bagaimana Faktanya?,” Kompas.com, 10 Oktober 2020 <https://nasional.kompas.com/read/2020/10/10/07244171/jokowi-bantah-upah-minimum-dihitung-per-jam-di-uu-ciptakerja-bagaimana?page=all>

[22] CNN Indonesia, "Details of Worker Wage Rules in the Ciptaker Omnibus Law," CNN Indonesia.com, 6 October 2020 <https://www.cnnindonesia.com/ekonomi/20201006164645-532-555075/rincian-aturan-upah-pekerja-dalam-omnibus-law-ciptaker>

account the company's ability and productivity. However, the components of the wage structure and scale were changed through Article 81 No. 30 of the Job Creation Law. The new rule states the structure and scale of workers' wages with regard to company capabilities and productivity. Furthermore, the structure and scale of the wages are used as guidelines for employers in determining wages. Thus, the government eliminates the components of class, position, years of service, education and competence. Furthermore, the government abolished Article 95 paragraph (1) of the Manpower Law concerning fines for employers who deliberately or neglected to pay workers' wages through Article 81 point 33 of the Job Creation Law. This has the potential to eliminate the protection of workers' rights to get wages on time due to the elimination of sanctions for employers.

2.6 Termination of Employment (PHK)

Previously, the Manpower Law only allowed companies to lay off workers on the grounds of bankruptcy, closed due to loss, changes in company status, workers violated work agreements, workers made serious mistakes, workers entered retirement age, workers resigned, workers died, and workers were absent. However, article 154A (1) (b) of the Job Creation Law adds one reason for layoffs for workers, namely company efficiency. Companies can only choose the way of layoffs if the company is permanently closed. In other words, companies that are only temporarily closed cannot fire their employees. However, the Job Creation Law states that companies can carry out layoffs for efficiency reasons, whether followed by company closure or not followed by company closure due to the company experiencing losses. In fact, the Constitutional Court (MK) has issued Decision No. 19 / PUU-IX / 2011 which states that efficiency reasons alone cannot be used as reasons for layoffs.

Companies can only choose the way to lay off if the company permanently closes. In other words, companies that are only temporarily closed cannot fire their employees. However, the Job Creation Law states that companies can carry out layoffs for efficiency reasons, whether followed by company closure or not followed by company closure due to the company experiencing losses. In fact, the Constitutional Court (MK) has issued Decision No. 19 / PUU-IX / 2011 which states that efficiency reasons alone cannot be used as reasons for layoffs.

2.7 Employment Social Security

The Job Creation Law adds a new social security program, namely Job Loss Guarantee in article 18 of the National Social Security System Law as revised in article 81 of the Job Creation Law. This guarantee is administered by BPJS Ketenagakerjaan based on the principles of social insurance and to workers / laborers who have been dismissed for 6 months of wages. In this Job Loss Guarantee program, the Central Government pays membership dues; different from other social security such as BPJS Kesehatan, for example where the payment burden falls on each insurance participant. Although this guarantee initiative should be appreciated by the public, considering that its implementation is very dependent on the implementing regulations that will govern; the next step is to oversee the formulation and implementation of this new guarantee program. Another thing that needs to be paid attention to is the amount of wages, if seen from the formulation of article 46D of the Job Creation Law, the amount of 6 months of wages is not only in the form of cash but can also be in the form of access to labor market information, and job training. This means that

the job loss guarantee component that is part of severance pay is not all in cash; but it can also be converted into other forms. By giving poured money, actually gives the recipient the flexibility to use it as needed. The elimination of criminal sanctions for companies that do not enroll their workers in the pension program as previously regulated in article 184 of the Manpower Law is also something that should be regretted from the Job Creation Law. The criminal provisions in the Manpower Law should be seen as a form of protection for the fulfillment of workers / labor rights. Removing these sanctions will result in the loss of workers / laborers' rights to pension benefits because there is no penalty for companies that do not enroll their employees in the pension program.

2.8 Severance pay

There is a new provision regarding severance pay which is amended in the Job Creation Law, namely in article 156 of the Manpower Law regarding the amount of severance pay given to workers who are victims of layoffs. In the Manpower Act, the amount of severance pay and / or service pay can be up to 32 times the monthly wage. However, the Job Creation Law reduced the amount to 25 times the wage; whose components consist of 19 months of wages paid by the company and 6 months through BPJS Ketenagakerjaan through the Job Loss Guarantee program (JKP). With this provision, severance pay is not only borne entirely by entrepreneurs, but also becomes the responsibility of the government. The facts show that the severance pay article in the Manpower Law, in its implementation, only 7% of companies comply with this provision.[23] Often workers / laborers have to fight for their right to severance pay through judicial mechanisms in industrial relations courts. Judicial mechanisms are costly and time consuming; so that workers often just resign themselves to receiving whatever amount of severance pay the company provides. This problem should be resolved by the government through a strict supervision and law enforcement mechanism for business actors. There is no guarantee that by lowering the severance pay, the company will comply more fully. The existence of a criminal sanction of one year to four years and a minimum fine of Rp. 100 million and a maximum of Rp. 400 million for entrepreneurs who do not pay severance pay as stated in Article 185 paragraph (1) of the Manpower Law amended in the Job Creation Law will be of little meaning without being accompanied by a supervisory function from the Government. Then the Job Creation Law also eliminates many articles related to severance pay in the Manpower Law which are actually articles of protection for workers / laborers (Table 1).

Table 1. Article Related to Severance Pay in the Removed Manpower Law.

ARTICLE RELATED TO THE SEVERANCE PAY IN THE MANAGEMENT ACT THAT IS REMOVED	IMPACT
Article 161	Workers / laborers who were laid off because they received the Third Warning Letter no longer receive severance pay
Article 162	Workers / laborers who resign do not receive severance pay
Article 163	Workers / laborers who have been laid off due to a change in status, merger, consolidation, or change in

[23] Syarifudin Yunus, "Job Creation Law: Kawal Tight PP, Severance Pay Can Be Made 28 Times Wages," Bisnis.com, 9 October 2020 <https://ekonomi.bisnis.com/read/20201009/9/1302899/uucipta-kerja-kawal-ketat-pp-pesangon-bisa-dibuat-28-kali-upah>

	company ownership are no longer receiving severance pay
Article 164	Workers / laborers who have been laid off due to the company's closure due to continuous losses for two years, or a *force majeure*, no longer gets severance pay
Article 165	Workers / laborers who were laid off because the company went bankrupt no longer receive severance pay
Article 166	Workers / laborers who have been laid off due to retirement age will no longer receive severance pay
Article 167	
Article 168	Workers / laborers who have been dismissed by reason of being absent for 5 (five) working days or more consecutively without written information, accompanied by valid evidence and have been properly summoned by the entrepreneur 2 (two) times and do not receive compensation money and separation money
Article 172	7 workers / laborers who were laid off due to retirement age no longer receive severance pay

The abolished provisions harm the rights of workers / labor and benefit the entrepreneur. However, there was no explanation from the legislators regarding the reasons for the elimination of this provision. Regulatory changes related to investment and ease of doing business in the Job Creation Law should not reduce the basic rights of workers / laborers because the high investment climate is not an excuse to reduce worker welfare .

4. CLOSING

The basic policy in labor law is to provide protection for vulnerable parties, namely workers / labor. The mandate of Article 27 (2) and Article 28D (2) of the 1945 Constitution guarantees that the right to work and get compensation and fair and proper treatment in work relations is a constitutional human right. The existence of manpower laws and regulations is intended to balance the bargaining position contained in the working relationship between workers and employers. The previous formulation of the Manpower Law contained many regulations that adequately protect workers, although in implementation there are still irregularities by companies because the labor inspection and enforcement system is not yet optimal. Instead of strengthening labor inspection and law enforcement, the new articles in the Job Creation Law actually create regulations that are increasingly detrimental to workers. The formulation of articles whose norms have been canceled by the Constitutional Court but revived in the Job Creation Law also adds to the complexity. The workforce cluster regulation in the Job Creation Law also changes the concept previously regulated in the Manpower Law by giving more arrangement to work relations based on the agreement of the parties / freedom of contract. The role of the Government through its legal products as a counterweight is much reduced. There needs to be a tighter supervision in drafting implementing regulations considering that there are so many manpower materials that depend on the regulations in the implementing regulations later.